

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

WHY DRIVE 55, INC.,)	Civil Action
)	No:11-cv-297
Plaintiff,)	
)	
v.)	
)	
BONNIE DUNCAN, JOSEPH W. DUNCAN,)	<u>DECLARATION IN</u>
STEVEN J. ALLEN, DOVE AIR, INC., CONAIR)	<u>SUPPORT OF MOTION</u>
JET SALES, INC., EDD CONN, ROBERT)	<u>FOR ENTRY OF</u>
HETTINGER, BILL JOHNSON, ALYSSA)	<u>DEFAULT JUDGMENT</u>
DUNCAN, JOHN DOE AND JANE DOE, Jointly)	
and Severally,)	
)	
Defendants.)	

Sean D. Soboleski, hereby declares as follows:

1. I am an attorney with Soboleski Law, PC, and am counsel for Plaintiff in this matter.
2. Plaintiff filed a Complaint [1] against Defendant, Edd Conn, on November 7th, 2011, asserting claims for Conversion (Count II), Trespass De Bonis Asportatis (Count III), Unjust Enrichment (Count IV), Fraud (Count V), and Replevin (Count VIII) against Defendant Edd Conn (hereinafter, “Conn”), and seeks damages in the amount of \$450,000.00, and pursuant to North Carolina statutes, seeks punitive damages and attorney’s fees incurred in bringing this action.
3. Defendant Conn was served with the Complaint and Summons pursuant to Rule 4(e)(2)(b) of the Federal Rules of Civil Procedure in the following manner: service on Edd Conn’s son/co-resident for service of process, Cole Conn, on November 14, 2011 at 3:25 p.m. at the defendant’s home address, 614 SE 12 Avenue, Deerfield Beach, FL

33441, as shown by the Affidavit of Service filed with the Court. Conn replied to this Complaint on November 23rd, 2011, by letter to the undersigned counsel.

4. Plaintiff thereafter filed its First Amended Complaint [22] on February 2nd, 2012, which alleged claims of Fraud (Count I), Aiding and Abetting Fraud (Count III), Conversion (Count V), Trespass De Bonis Asportatis (Count VI), Unjust Enrichment (Count VII), and Replevin (Count VIII) against Defendant Edd Conn. Count Three (III) contained a new claim alleged as against Conn. The First Amended Complaint and new Summons was served on Conn on February 28th, 2012, pursuant to Fed. R. Civ. P. 4(e)(2)(A), and as evidenced by the return of service filed with the Affidavit of Service [40] that was filed by the undersigned on March 16th, 2012.
5. Defendant Edd Conn, upon information and belief, to date, has not filed an Answer or other responsive pleading to Plaintiff's First Amended Complaint, although he was deemed to have appeared in this action by the Court's Order [23] when Conn appeared by letter in response to the *initial* Complaint. The undersigned has not received any further letters or communication from Edd Conn since the receipt of the letter from Edd Conn dated November 23, 2011, and referenced in the Court's Order [23] of February 7th, 2012.
6. Further, Plaintiff sought leave to amend the pleadings again and was granted leave to file its Second Amended Complaint [53], which plaintiff filed on May 8th, 2012. This Second Amended Complaint contained identical allegations and claims as to defendant Conn, and pursuant to Fed. R. Civ. P. 5(a)(1)(b) and 5(a)(2), needed only to be served by regular mail on defendants who had appeared. As the Second Amended Complaint contained no claims that differed from the previously served First Amended Complaint for relief

against Conn, counsel served the Second Amended Complaint on Conn by regular mail, on May 9th, 2012, as evidenced by the Affidavit of Service [85], filed by the undersigned at the Court's request.

7. To date, the time for filing an answer or other pleading in response to plaintiff's Second Amended Complaint by defendant Conn has expired, and no answer or other pleading has been filed by Conn, nor has any response been received by the undersigned to the Second Amended Complaint.
8. Defendant, Edd Conn ("Conn") is and was at the time this action was instituted, an individual, who upon information and belief, resides at 614 SE 12 Avenue, Deerfield Beach, Florida, and upon information and belief is not a minor person, nor incompetent, nor is he enrolled in military service.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 11th, 2013.

s/ Sean D. Soboleski
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